

1 ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

2 In the Matter of the Mortgage Broker License of:

3 **REGAL MORTGAGE COMPANY DBA REGAL**
4 **ONLINE MORTGAGE AND DAVID WARE,**
5 **PRESIDENT**

6 10105 E. Via Linda, Suite 103
7 Scottsdale, AZ 85258

Petitioners.

No. 09F-BD049-BNK

**SUPERINTENDENT'S FINAL
DECISION AND ORDER OF
REVOCATION**

8 The Superintendent of Financial Institutions (the "Superintendent") having reviewed the
9 record in this matter, including the Administrative Law Judge Decision attached and incorporated
10 herein by this reference, adopts the Administrative Law Judge's Findings of Fact, Conclusions of
11 Law and recommended decision as follows:

12 **ORDER**

13 **IT IS ORDERED** that Petitioners' Mortgage Broker License Number MB 0904728 is
14 revoked effective as of the date of this Order.

15 **IT IS FURTHERED ORDERED** that Petitioners shall pay a civil money penalty in the
16 amount of \$10,000.00 within forty-five (45) days of the effective date of this Order.

17 **NOTICE**

18 The parties are advised that this Order becomes effective immediately and the provisions of
19 this Order shall remain effective and enforceable except to the extent that, and until such time as,
20 any provision of this Order shall have been modified, terminated, suspended, or set aside by the
21 Superintendent or a court of competent jurisdiction.

22 DATED this 27th day of August, 2009.

23 

24 Felecia Rotellini
25 Superintendent of Financial Institutions
26
27
28

1 ORIGINAL filed this 27th day of August, 2009 in the office of:

2 Felecia Rotellini, Superintendent of Financial Institutions
3 Arizona Department of Financial Institutions
4 ATTN: June Beckwith
5 2910 North 44th Street, Suite 310
6 Phoenix, Arizona 85018

7 COPY mailed same date to:

8 Lewis Kowal, Administrative Law Judge
9 Office of the Administrative Hearings
10 1400 West Washington, Suite 101
11 Phoenix, AZ 85007

12 Craig A. Raby, Assistant Attorney General
13 Office of the Attorney General
14 1275 West Washington
15 Phoenix, AZ 85007

16 Robert D. Charlton, Assistant Superintendent
17 Chris Dunshee, Senior Examiner
18 Arizona Department of Financial Institutions
19 2910 N. 44th Street, Suite 310
20 Phoenix, AZ 85018

21 AND COPY MAILED SAME DATE by
22 Certified Mail, Return Receipt Requested, to:

23 Regal Mortgage Company
24 dba Regal Online Mortgage
25 c/o David Ware, President and Statutory Agent
26 10105 E. Via Linda, Suite 103
27 Scottsdale, AZ 85258
28 Petitioners

David Ware, Statutory Agent For:
Regal Mortgage Company
dba Regal Online Mortgage
2575 E. Camelback Road, Suite 450
Phoenix, AZ 85016

David Ware
President
Regal Mortgage Company
Dba Regal Online Mortgage

4355 Clayton Avenue
Los Angeles, CA 90027

By: Quine Becken

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IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Mortgage Broker
License of:

No. 09F-BD049-BNK-rhg

REGAL MORTGAGE COMPANY DBA
REGAL
ONLINE MORTGAGE AND DAVID WARE,
PRESIDENT
10105 E. Via Linda, Suite 103

**ADMINISTRATIVE
LAW JUDGE DECISION**

Petitioners.

HEARING: April 29, 2009-The record closed on August 3, 2009.

APPEARANCES: Assistant Attorney General Craig Raby appeared on behalf of the Arizona Department of Financial Institutions; David Ware appeared on his own behalf and on behalf of Regal Mortgage Company dba Regal Online Mortgage.

ADMINISTRATIVE LAW JUDGE: Lewis D. Kowal

FINDINGS OF FACT

Background

1. At all times material to this matter, Regal Mortgage Company, doing business as Regal Online Mortgage (Regal), was licensed by the Arizona Department of Financial Institutions (Department) as a mortgage broker.
2. At all times material to this matter, David Ware (Mr. Ware) was, and currently is, the President of Regal.
3. From September 27, 2007 through October 2, 2007, the Department conducted an examination of Regal. As a result of the examination, certain violations were reported and Regal was advised of such violations. The Department issued a Notice of

1 Assessment pertaining to the violations found during the above-mentioned examination
2 and assessed a civil penalty of \$10,000.00.

3 4. Regal filed a request for hearing to appeal the Notice of Assessment and an
4 administrative proceeding was set before the Office of Administrative Hearings, an
5 independent state agency. That matter was resolved through an agreement for the
6 execution of a Consent to Assessment to be entered into between the Department and
7 Regal whereby Regal and Mr. Ware would agree to be jointly and severally responsible
8 for paying a civil penalty of \$5,500.00. The administrative matter was vacated based
9 upon the settlement. A Consent to Assessment was signed by Mr. Ware on behalf of
10 Regal with the civil penalty amount reduced to \$5,500.00. Subsequently, at the request
11 of Mr. Ware, the Department agreed to a payment schedule.

12 5. No payments with respect to the civil penalty agreed to in the Consent to
13 Assessment were ever made to the Department. On October 21, 2008, the Department
14 issued a Cease and Desist Order ordering Regal and Mr. Ware to cease the violations
15 of the mortgage broker statutes and rules that were found during the above-mentioned
16 examination.

17 6. Regal and Mr. Ware requested a hearing to contest the Cease and Desist Order.

18 7. The Department initiated an administrative proceeding against Regal and Mr.
19 Ware to determine if grounds exist for the Cease and Desist Order, for the imposition of
20 a civil penalty and the suspension or revocation of Regal's mortgage broker license,
21 and any other remedy necessary and proper under the laws regulating mortgage
22 brokers.

23 8. The administrative hearing convened on January 13, 2009 and at that time, the
24 parties entered into a stipulation as to the facts and conclusions of law, whereby Regal
25 admitted to certain violations of law and the parties presented their positions as to when
26 payment should be made to the Department. At that time, the Department amended
27 the Notice of Hearing to exclude Mr. Ware as a party. A decision was issued by the
28 Administrative Law Judge that was rejected by the Superintendent of the Department
29 (Superintendent).
30

- 1 h. The type of violations set forth above in paragraphs a-g were similar to
2 those found in a prior examination of Regal that the Department conducted;
- 3 i. Regal had not reconciled its accounts since June 2007. This type of
4 violation was noted in the prior examination of Regal and was to have been
5 corrected;
- 6 j. Minutes of Regal's meetings were not provided for the Department to
7 review;
- 8 k. Regal's loan list did not contain a provision for entering the application
9 date or name of loan officer;
- 10 l. Regal's loan list did not include declined and withdrawn applications;
- 11 m. Regal's loan list did not have separate entries for disposition and
12 disposition date;
- 13 n. Regal did not keep and maintain the withdrawal, cancellation or denial
14 notice for 2 borrowers;
- 15 o. Regal did not provide complete Truth-in-Lending disclosures to 5
16 borrowers;
- 17 p. Regal did not disclose the Yield Spread Premium on the Good Faith
18 Estimate for 4 borrowers;
- 19 q. Regal did not provide complete, updated Servicing Transfer disclosures to
20 5 borrowers. These types of violations were noted in the prior examination and
21 not corrected;
- 22 r. Regal failed to maintain complete records and was unable to provide any
23 back-up documents.
- 24 s. Regal did not maintain a statutorily correct written agreement in loan files
25 for 4 borrowers. This type of violation was noted in the prior examination and not
26 corrected;
- 27 t. Regal's Responsible Individual, Mr. Ware, failed to be in active
28 management as evidenced by his failure to ensure compliance with the law
29 governing mortgage brokers;
30

1 u. Regal did not notify the Department that it maintained branch office
2 records at its principal place of business office, financial documents at its
3 accountant's office, and organizational files with its lawyer;

4 v. Regal has used a disclosure document that limits a right to receive a
5 request for a copy of the appraisal from an applicant to 90 days when there is no
6 limit under Arizona law; and

7 w. Regal did not obtain approval from the Superintendent with respect to
8 computer or mechanical record keeping systems and the records appear to be
9 generated from one or more computer systems;

10 15. Mr. Dunshee went through the documents that he reviewed and testified as to
11 the deficiencies found with respect to those documents as they relate to State and
12 Federal law.

13 16. Mr. Dunshee referenced Arizona statutes and rules specifically that were violated
14 and only generally mentioned that they constituted violations of Real Estate Settlement
15 Practices Act (RESPA) without identifying the particular provisions of RESPA. The
16 record remained open for the submission of citations to the specific provisions of
17 RESPA that the Department believes were violated that are incorporated by reference
18 in the laws of Arizona that regulate mortgage brokers.

19 17. In its Closing Argument the Department made specific reference to the
20 provisions of RESPA that were found by the Department to be violated. Those
21 provisions are incorporated by reference herein and addressed below in the
22 Conclusions of Law.

23 CONCLUSIONS OF LAW

24 1. The Superintendent of the Department is vested with the authority to regulate
25 persons engaged in the mortgage broker business and has the duty to enforce statutes
26 and rules relating to mortgage brokers. See A.R.S. § 6-901 *et seq.*

27 2. The Department bears the burden to prove by a preponderance of the evidence
28 that Regal and Mr. Ware have violated State laws pertaining to mortgage brokers. See
29 A.A.C. R2-19-119.
30

1 9. The Superintendent ordered that this matter be set for re-hearing and the
2 Superintendent also rejected the amendment of the Notice of Hearing, which excluded
3 Mr. Ware as a party.

4 10. The re-hearing was scheduled to consider the issues set forth in the initial Notice
5 of Hearing that the Department issued on December 8, 2008 that was the subject of the
6 January 13, 2009 administrative hearing held before the Office of Administrative
7 Hearings.

8 Department's Evidence

9 11. From September 27, 2007 through October 2, 2007, Chris Dunshee (Mr.
10 Dunshee), an examiner employed by the Department, performed an examination of
11 Regal.

12 12. As a result of the examination, Mr. Dunshee prepared a Report of Examination
13 and Notice of Assessment.

14 13. Mr. Ware and Regal executed Consent to Assessment and agreed to pay the
15 Department the sum of \$5,500.00 and the expense of the examination. It is undisputed
16 that the examination expense has been paid.

17 14. During the examination, Mr. Dunshee found the following violations:

18 a. Regal failed to obtain a completed and properly dated I9 (Federal
19 Employment Eligibility Verification Form) before hiring 8 employees;

20 b. Regal failed to obtain a completed and signed employment application
21 before hiring 2 employees;

22 c. Regal did not obtain a signed statement and detailed information
23 regarding felony convictions for 8 employees before they were hired;

24 d. Regal did not consult with an applicant's most recent or next recent
25 employer before hiring 9 employees;

26 e. Regal did not inquire into an applicant's qualifications before hiring 9
27 employees;

28 f. Regal did not obtain a current credit report from a credit reporting agency
29 before hiring 8 employees;

30 g. Regal did not obtain an explanation for derogatory credit information
before hiring 5 employees;

3. A preponderance of the evidence is "such proof as convinces the trier of fact that the contention is more probably true than not." Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).

4. The Department proved by a preponderance of the evidence that Regal and Mr. Ware, as the Responsible Individual, violated the provisions of law set forth below:

- a. A.R.S. § 6-903(N) by failing to conduct the minimum elements of reasonable employee investigations before hiring employees;
- b. A.A.C. R20-4-917(C) by failing to reconcile and update all records specified in A.A.C. R20-4-917(B) in each calendar quarter;
- c. A.A.C. R20-4-917(B)(9) by failing to maintain a complete record containing all documents as required;
- d. A.A.C. R20-4-917(B)(1) by failing to maintain all required information on their list of all executed loan applications or executed fee agreements;
- e. A.R.S. § 6-906(A) and A.A.C. R20-4-917(B)(6) by failing to maintain originals or clearly legible copies of all mortgage loan transactions for not fewer than five years;
- f. A.R.S. § 6-906(D) and A.A.C. R20-4-917(B)(6)(e) by failing to comply with the disclosure requirements of Title I of the Consumer Credit Protection Act (15 U.S.C. §§ 1601 through 1666j), the Real Estate Settlement Procedures Act (12 U.S.C. §§ 2601 through 2617), and the regulations promulgated under these acts; Incomplete Truth in Lending disclosure: 12 C.F.R. §§ 226.18(k), (l), (m), (n) and (q) (2007) [Truth in Lending - Regulation Z, implementing the Consumer Credit Protection Act, 15 U.S.C. §§ 1601, *et seq.*]; Truth in Lending disclosure provided prior to loan application: 12 C.F.R. § 226.19 (2007); Good Faith Estimate provided prior to loan application: 24 C.F.R. § 3500.7 (2007); Servicing Transfer disclosure provided prior to loan application: 24 C.F.R. 3500.21(b)(1) (2007); Servicing Transfer disclosure not updated to show the most recent three year history: 24 C.F.R. 3500.21(b)(3)(ii)(A) (2007); and Yield Spread Premium not disclosed on the Good Faith Estimate: 24 C.F.R. 3500, Appendix B, ¶ 13 (2007).
- g. A.R.S. § 6-906(A) and A.A.C. R20-4-917(B) by failing to keep and maintain at

all times correct and complete records as prescribed by the Superintendent;

- h. A.R.S. § 6-906(C) by failing to use a written agreement, signed by all parties, when accepting fees and/or documents in connection with mortgage loan applications;
- i. A.R.S. § 6-903(E) by failing to ensure that the Responsible Individual maintained a position of active management;
- j. A.R.S. § 6-906(A) by failing to notify the Superintendent prior to maintaining branch records at their principal place of business;
- k. A.R.S. § 6-906(C) by using an appraisal disclosure that places an unlawful 90-day limit on the amount of time in which a borrower may obtain a copy of an appraisal for which the borrower has paid;
- l. A.A.C. R20-4-917(A) by failing to obtain the Superintendent's approval of their use of a computer or mechanical recordkeeping system; and
- m. A.R.S. § 6-132 by failing to pay to the Department the civil money penalty due pursuant to the Notice of Assessment and Consent to Assessment in accordance with the agreed upon payment schedule while the Consent to Assessment was in effect.

5. Regal and Mr. Ware did not present any credible evidence that contested the violations found by Mr. Dunshee as a result of the above-mentioned examination.

6. The weight of the evidence of record established that the Cease and Desist Order issued against Regal and Mr. Ware was appropriately issued.

7. Based upon the above-mentioned violations, grounds exist for the Department to impose a civil monetary penalty in the amount of \$10,000.00 against Regal and Mr. Ware, as a joint and several liability. See A.R.S. § 6-132. Mr. Ware, as Responsible Individual, was responsible for the statutory violations committed by Regal.


8. Based upon the above, grounds exist for the revocation of Regal's mortgage broker's license pursuant to A.R.S. § 6-905(A)(3).

ORDER

Based upon the above, it is ordered affirming the Cease and Desist Order issued against Regal and Mr. Ware; Regal's mortgage broker's license shall be revoked on the effective date of the Order issued in this matter; and within forty-five days of the

1 effective date of the Order entered in this matter, a civil monetary penalty of \$10,000.00
2 shall be paid to the Department and such penalty is the joint and several liability of
3 Regal and Mr. Ware.
4


5 Done this day, August 21, 2009.
6

7 
8 _____
9 Lewis D. Kowal
10 Administrative Law Judge
11

12 Original transmitted by mail this

13 24 day of August, 2009, to:
14
15

16 Felecia A. Rotellini, Superintendent
17 Arizona Department of Financial Institutions
18 ATTN: Susan Longo
19 2910 N. 44th Street, Suite 310
20 Phoenix, AZ 85018
21

22 By 
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